

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 64 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

BHARUCH TEXTILE MILL

Appearance:

Mr. M.A.Bukhari, ADDL.PUBLIC PROSECUTOR for Petitioner
MR AJ PATEL for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 23/10/97

ORAL JUDGEMENT

The State of Gujarat has come in Revision against the order passed below exh. 101 in Essential Commodities Case No. 30 of 1988 on the file of the learned Special Judge, Bharuch passed by him on 9.10.1996.

2. It seems that the learned Additional

Sessions Judge of Bharuch is the Designated Court under Essential Commodities Act for the purpose of trial of the offences punishable under Essential Commodities Act. In view of the provisions of section 12-AA of the Essential Commodities Act, the Special Judge appointed under the said Act is empowered to try the accused by following the procedure of summary trial. It seems that in the said special case no. 30 of 1988, the evidence for the prosecution was recorded prior to July, 1996 and the matter was at the stage of recording statement of the accused under section 313 of the Criminal Procedure Code and at that time, the said Special Judge was transferred and in his place, another Judge came and he was also designated as Special Judge for Essential Commodities Act. When the said matter came up before him, the learned Prosecutor gave an application exh. 101 and requested the learned Judge to proceed further on the strength of the evidence recorded by his predecessor and he should not order a de novo trial. That application of the prosecution has been rejected. The accused had opposed the said claim of the prosecution. After rejecting the said application of the prosecution, the learned Special Judge had ordered to have a de novo trial and therefore, the the State has come in Revision against the said order.

3. Admittedly, a Special Judge under Essential Commodities Act is empowered under the provisions of Section 12-AA of the Act to follow the procedure of summary trial. If the provisions of section 12-AA are seen, then it would be quite clear that the said Special Court is also governed by the provisions of the Code of Civil Procedure for the purpose of procedure for the trial. Section 260 of the Code of Criminal Procedure provides the procedure for summary trial. As per the said provisions of section 260, the evidence in the summary trial is to be recorded in the manner in which the evidence is recorded in summons cases. Section 274 of the Code of Criminal Procedure lays down the procedure for recording the evidence in a summons case. As per the said provision, as the examination of each witness proceeds the Magistrate is to prepare a memo of the substance of the evidence of the witnesses and he is not bound to record the evidence in verbatim. Therefore, when a trial of an offence in criminal case is held by following the summary procedure, then the evidence recorded in such a trial will be the evidence recorded in the manner proceeded by section 274. Therefore, the evidence recorded by a Magistrate trying an accused in summary manner could not be said to be a record of the total disclosure of the evidence of the

witnesses. Therefore, in these circumstances, if succeeding Judge/Magistrate feels that it would not be appropriate to put reliance on such notes of evidence and to have a de novo trial, it could not be said that such approach of a Judge/Magistrate is illegal or improper.

4. Mr. Bukhari, learned APP vehemently urged before me that in view of the provisions of section 326, it is not necessary to have a de novo trial. If the provision of sub-section (1) of section 326 of the Code of Criminal Procedure is seen, then it would be quite clear that the said provision is a permissive provision. Said sub-section (1) of section 326 permits a Magistrate to proceed further with the trial on the basis of the evidence recorded by his predecessor. It nowhere lays down that the succeeding Magistrate or Judge is bound to proceed on the basis of the evidence recorded by his predecessor. The word used is "may" and not "shall" for the purpose of acting on the evidence recorded by his predecessor. Now, apart from this, sub-section (3) of section 326 makes it quite clear that the provisions of the said section, do not apply to the summary trial. Therefore, under these circumstances, the order passed by the learned Special Judge could not be said to be an illegal order so as to interfere with the said order by exercising revisional jurisdiction. Though, I agree with the submission of learned APP Mr. Bukhari that the learned Special Judge was not justified in relying on the case under Old Criminal Procedure Code, in support of his order to order de novo trial, I am unable to hold that the order passed by the learned Special Judge is illegal. I therefore, hold that there are no grounds to interfere with the order in question by exercising revisional jurisdiction. I therefore, reject this Revision Application. Rule is discharged.

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